

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Applicant : Amy M. Manetta
Serial No. : 09/805,970
Filed : March 14, 2001
For : SYSTEM AND METHOD FOR PROCESSING VENTILATOR
INFORMATION
Examiner : Truc T. Chuong
Art Unit : 2179

APPEAL BRIEF

May It Please The Honorable Board:

Appellants appeal the Final Rejection, dated April 19, 2006 of Claims 1, 2, 4-13 and 15 - 22 of the above-identified application. The fee of five hundred dollars (\$500.00) for filing this Brief and the fee of one-hundred and twenty dollars (\$120.00) for a one month extension is being paid by credit card. Please charge any additional fee or credit any overpayment to Deposit Account No. 50-2828. Enclosed is a single copy of this Brief.

Please charge any additional fee or credit any overpayment to the above-identified Deposit Account.

Appellants do not request an oral hearing.

I. REAL PARTY IN INTEREST

The real party in interest of Application Serial No. 09/805,970 is the Assignee of record:

Draeger Medical Systems, Inc.
16 Electronics Ave.
Danvers, MA 01923

II. RELATED APPEALS AND INTERFERENCES

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 09/805,970.

III. STATUS OF THE CLAIMS

Claims 1, 2, 4-13 and 15 - 22 are rejected and the rejection of claims 1, 2, 4-13 and 15 - 22 are appealed.

IV. STATUS OF AMENDMENTS

All amendments were entered and are reflected in the claims included in Appendix I.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 provides an internet compatible system for displaying medical information derived from a plurality of sources (page 2, lines 19-20; Figure 1, 1). A communication network acquires ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command (page 2, lines 20-22; Figure 2A, 204). A device prioritizes received ventilator parameters and settings for display in a desired order and allocates an attribute to distinguish changed ventilator parameters and settings (page 2, lines 22-25; Figure 2B, 210, 215). A display generator initiates generation of data representing a display of prioritized ventilator parameters and

settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings (page 2, lines 22-25; Figure 2B, 216).

Dependent claim 2 includes the features of independent claim 1 along with the additional feature that the attribute is a different color (page 8, line 27; Figure 3, 300, 310).

Dependent claim 4 includes the features of claims 2 and 1 along with the additional feature that display generator generates data representing a window for displaying the ordered ventilator parameters and settings, in a first window (page 6, lines 31-32; Figure 3, 305).

Dependent claim 5 includes the features of claim 4 along with the additional feature that the display generator comprises an internet browser (page 6, lines 12-17; Figure 1, 26-1, 29).

Dependent claim 9 includes the features of claim 8 along with the additional feature that the second user command comprises selection of a filtered list (page 9, lines 14-18; Figure 5, 501).

Dependent claim 10 includes the features of claim 8 along with the additional feature that the second user command comprises creation of a set of values for selected parameters and settings (page 9, lines 5-12; Figure 4, 400).

Independent claim 12 provides an internet compatible method for displaying medical information derived from a plurality of sources (page 2, lines 29-20; Figure 1, 1). Ventilator parameters and settings associated with a patient are acquired on a substantially

periodic basis and in response to a user command (page 2, lines 20-22; Figure 2A, 204). Received ventilator parameters and settings are prioritized for display in a desired order and for allocating an attribute to distinguish changed parameters and settings (page 2, lines 22-25; Figure 2B, 210, 215). Generation of data is initiated. The data represents a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings (page 2, lines 22-25; Figure 2B, 216).

Dependent claim 13 includes the features of independent claim 12 along with the additional feature that the attribute is a different color (page 8, line 27; Figure 3, 300, 310).

Dependent claim 15 includes the features of independent claim 12 along with the additional feature that the step of initiating generation, initiates generating of data representing a window for displaying the ordered ventilator parameters and settings (page 6, lines 31-32; Figure 3, 305).

Dependent claim 16 includes the features of claim 15 along with the additional feature that an internet browser does the generating step (page 6, lines 12-17; Figure 1, 26-1, 29).

Dependent claim 17 includes the features of claim 15 along with the additional feature that the generating step displays the ventilator parameters and settings so that the changed ventilator parameters and changed ventilator settings are displayed in the different color (page 8, lines 25-30; Figure 3, 300, 310).

Dependent claim 18 includes the features of claim 12 along with the additional feature that in response to the user command another set of new ventilation unit parameters and settings are acquired (page 5, line 34 to page 6, lines 6; Figure 2A, 206).

Dependent claim 20 includes the features of claim 19 along with the additional feature that the second user command comprises selection of a filtered list (page 9, lines 14-18; Figure 5, 501).

Dependent claim 21 includes the features of claim 19 along with the additional feature that the second user command comprises creation of values for selected parameter and settings (page 9, lines 5-12; Figure 4, 400).

Dependent claim 22 includes the features of claim 12 along with the additional feature that any one of a plurality of sources is selected (page 5, lines 21-22; Figure 2A, 202, 204).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 and 12 are rejected under 35 USC 102(e) as being anticipated by Reuss et al. (U.S. Pat. No. 6,406,426).

Claims 2, 4-11, 13 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuss et al. (U.S. Pat. No. 6,406,426) in view of Shulman et al. (US 2001/0030664).

VII. ARGUMENT

Reuss when taken alone or in combination with Shulman does not anticipate or make the present claimed invention unpatentable. Thus, reversal of the Final Rejection (hereinafter termed “rejection”) of claims 1, 2, 4-13 and 15-22 under 35 U.S.C. §§ 102(e) and 103(a) is respectfully requested.

Overview of the Cited References

Reuss provides an integrated medical monitoring and alert system for monitoring a medical therapy delivered to a patient and patient physiological parameters. The medical monitoring system preferably includes a central monitoring system and one or more of a therapeutic device, a patient monitor and an integrated alert system. The components are linked together through a bi-directional communications system which can comprise a wireless communications link to provide for mobile patients and communications to remote caregivers (see Abstract).

Shulman provides a subscriber device that receives notification and determines if an icon is to be displayed in response to the received notification. When the icon is displayed, the interactivity level or message severity is determined from the context of the received notification and preferences are retrieved from at least one data record corresponding to interactivity level configuration settings. An icon is then generated from the retrieved preferences and it is determined if there is a message associated with the icon from the received notification. If there is no associated message then the icon is displayed. However, when there is an associated message, the message is attached to the generated icon and then displayed (see Abstract).

Rejection of Claims 1 and 12 under 35 USC 102(e)
over Reuss et al. (U.S. Patent No. 6,406,426)

Reversal of the rejection of claims 1 and 12 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,406,426 issued to Reuss et al. is respectfully requested because the rejection makes crucial errors in interpreting the cited reference. The rejection erroneously states that claims 1 and 12 are anticipated by Reuss.

CLAIM 1

The present invention as claimed in claim 1 recites an internet compatible system for displaying medical information derived from a plurality of sources. The system includes a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command. The system further includes a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings. A display generator initiates generation of data representing a display of the prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

In order for the present claimed invention to be considered anticipated by a piece of prior art, the following conditions must be met. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as

required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant respectfully submits that Reuss neither discloses nor suggests each element of the claimed invention and thus, does not meet the above conditions as required by MPEP §2131. As discussed in the remarks of the Response filed on December 23, 2005, and in the Pre-Appeal Brief Review Request filed with the Notice of Appeal on July 19, 2006, Reuss does not anticipate the present claimed invention.

Specifically, Applicant respectfully submits that the feature in Reuss alleged to anticipate the claimed feature of “a device for prioritizing received ventilator parameters and settings” shows a fundamental misinterpretation of the Reuss system. Reuss neither discloses nor suggests “a device for prioritizing received ventilator parameters **and settings** for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. Rather, Reuss in Column 15, lines 4-8 cited by the Examiner describes a clean-up process performed by a Message Server Task 98. The Message Server Task is not a “device for prioritizing received ventilator parameters and settings” as in the present claimed invention. Rather, the functions able to be performed by the Message Server task are described beginning on line 48 of column 14 and ending on line 15 of column 15. Specifically, the Message Server Task of Reuss controls the flow of messages to a plurality of devices when a medical alert is detected. The Message Server is able to determine if delivery of the message has been affected and manages the memory used for storing messages contained in the remote devices. In essence, the Message Server Task is a notification system that ensures all relevant alerts are received by the proper personnel in support of patient treatment. This is fundamentally different from the present claimed system.

There is no 35 USC 112 compliant enabling disclosure of the present claimed feature of “prioritizing received ventilator parameters and settings **for display in a desired order**” as in the claimed invention. Rather the section of Reuss cited in the Rejection discloses a “maintenance activity” whereby messages are selected to be removed from memory “based upon age of the message, whether it has been read, and the priority of a medical alert (if any) associated with it.” In fact, the activity performed by the Message Server Task of Reuss is a clearinghouse for system resources. The Message Server Task ensures that the Reuss system has the appropriate resources to affect delivery of alert messages. Thus, the deletion of these messages when a memory is full is fundamentally different from a “device for prioritizing...parameters and settings for display in a desired order” as in the present claimed invention. The messages being deleted by Reuss are NOT “expressly or inherently” equivalent to “prioritizing received ventilator parameters and settings for display in a desired order” as in the present claimed invention. Prioritizing the display of the ventilator parameters and settings as claimed in the present invention advantageously provides users with an easy and recognizable display for analyzing the received parameters and settings. “This feature allows the user to easily and efficiently customize his or her data viewing according to his or her needs” (Specification page 9, lines 23-24). Reuss provides a warning system and is not concerned with the efficient and “prioritized” display of “ventilator parameters and settings” as in the present claimed invention.

Furthermore, the section of Reuss cited by the Rejection that allegedly anticipates the claimed system provides no 35 USC 112 compliant enabling disclosure of displaying of messages or data of any type. Instead, the cited section discloses the manner in which messages are selected for removal from system or device memory (see col. 15, lines 3 –

10). This is NOT equivalent to “display[ing] in a desired order” any received “ventilator parameters and settings” as in the present claimed invention. Priority based deletion of messages from a memory as in Reuss is wholly unlike “prioritizing...for display” as in the present claimed system. In fact, Reuss specifically describes tasks that are responsible for displaying medical data on a device. In column 13, lines 53 – 56, Reuss discusses a “waveform display task and numeric display task” which are responsible for displaying waveforms and numeric vital signs. Reuss specifically provides mechanisms for displaying data yet fails to provide any 35 USC 112 compliant enabling disclosure of how the display of the medical data is affected. Additionally, Reuss describes a Trend Display Manager which is responsible for displaying a trend of therapy status data (see col. 14, lines 32 – 42). Therein, Reuss provides that the display of therapy status data is done over time. Similarly, to the description to the “Waveform Task” and Numeric Display Task”, Reuss is fails to disclose or suggest “a device for prioritizing received ventilator parameters and settings for display in a desired order” and a “display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order” as in the present claimed invention.

Reuss is also silent with respect to the feature of “allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. “One exemplary attribute may be display color. That is, when the ventilator chart shown in Fig. 3 is requested to be displayed via computer 26, ventilator data will be color coded on the web browser so that the user is able to distinguish what new data have changed. For example, as old data that are displayed on the screen in one color (e.g., black) and carried forward to the let in each column as time advances, any newly acquired data that have changed will be displayed in another color (e.g. blue), in the column representing the current time” (Specification page 8, lines 27-33). Thus, the user is able to discern at a

glance whether there have been any changes to ventilator parameters and settings. Allowing the changed parameters and settings to have attributes different from the original data as claimed in the present claimed invention provides the user with even more efficient and customizable display of ventilator data. There is no 35 USC 112 compliant enabling disclosure of the claimed feature and therefore, Reuss does not include each and every element of this claimed invention as required under MPEP 2131.

Specifically, the Rejection cites column 15, lines 4 – 8 as anticipating “allocating an attribute to distinguish changed ventilator parameter and settings”. Applicant respectfully disagrees. As discussed above, the Message Server Task is merely responsible for ensuring any device connected via the Reuss system has adequate resources to process alert messages that indicate a patient may need medical attention. Thus, the Message Server Task queries the physical memories of the devices and based on predetermined rules (i.e. message age, read status, priority of medical alert) determines which messages should be deleted from memory. This is fundamentally different than “allocating an attribute to distinguish changed ventilator parameters and setting” as in the present claimed invention. Furthermore, the Message Server Task is not concerned with or able to affect display of any data beyond removing the message and any indication that is associated with the deleted message. This feature in Reuss is unrelated to the present claimed feature of “allocating an attribute to distinguish changed ventilator parameters and settings”. Moreover, the features described in Reuss that do affect display of data fail to disclose or suggest the attribute allocation of the claimed system. Instead, Reuss merely describes features that allow data to be displayed and not how the data is actually displayed (see Waveform Task and Numeric Display Task, col. 13, lines 53 – 56).

Furthermore, as discussed above, Reuss is not concerned with providing a user-friendly and efficient way to process and display ventilator settings and parameters. Therefore, Reuss neither discloses nor suggests “a display generator for initiating generation of data representing a display of **prioritized ventilator parameters and settings** in the desired order and **attributes for distinguishing the changed ventilator parameters and settings**” as in the present claimed invention. While Reuss in Column 3, lines 46-60, Column 7, lines 27-43 and Column 15, lines 4-8 as cited by the Examiner describes displaying therapy status data at a patient monitor and a description of therapy status data and message server task maintenance respectively, none of the cited passages include any 35 USC 112 compliant enabling disclosure of the present claimed feature.

Additionally, while Reuss teaches in column 3, line 60 a “hardwired or wireless network connection to the remote devices of the caregivers,” this does not provide 35 USC 112 enabling disclosure of an “internet compatible method” as in the present claimed invention. As per the MPEP 2141.02, the reference needs to be looked at in its totality, and a hardwired or wireless network connection to remote devices used in a clinical or hospital setting does not imply an “internet compatible system” as used in the present invention. Consequently withdrawal of the Rejection of claim 12 under 35 USC 102(e) is respectfully requested.

Consequently, withdrawal of the rejection of claim 1 under 35 USC 102(e) is respectfully requested.

CLAIM 12

The present invention as claimed in claim 12 recites an internet compatible method for displaying medical information derived from a plurality of sources. Ventilator

parameters and settings associated with a patient are acquired on a substantially periodic basis and in response to a user command. The method further includes the step of prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings. Generation of data representing a display of the prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings is initiated.

As described above with respect to claim 1, Applicant respectfully submits that Reuss neither discloses nor suggests each element of the claimed invention and thus, does not meet the above conditions as required by MPEP §2131 and does not anticipate the present claimed invention.

Specifically, Applicant respectfully submits that the feature in Reuss alleged to anticipate the claimed feature of “a device for prioritizing received ventilator parameters and settings” shows a fundamental misinterpretation of the Reuss system. Reuss neither discloses nor suggests “a device for prioritizing received ventilator parameters **and settings** for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. Rather, Reuss in Column 15, lines 4-8 cited by the Examiner describes a clean-up process performed by a Message Server Task 98. The Message Server Task is not a “device for prioritizing received ventilator parameters and settings” as in the present claimed invention. Rather, the functions able to be performed by the Message Server task are described beginning on line 48 of column 14 and ending on line 15 of column 15. Specifically, the Message Server Task of Reuss controls the flow of messages to a plurality of devices when a medical alert is detected. The Message Server is able to determine if delivery of the message has been

affected and manages the memory used for storing messages contained in the remote devices. In essence, the Message Server Task is a notification system that ensures all relevant alerts are received by the proper personnel in support of patient treatment. This is fundamentally different from the present claimed system.

There is no 35 USC 112 compliant enabling disclosure of the present claimed feature of “prioritizing received ventilator parameters and settings **for display in a desired order**” as in the claimed invention. Rather the section of Reuss cited in the Rejection discloses a “maintenance activity” whereby messages are selected to be removed from memory “based upon age of the message, whether it has been read, and the priority of a medical alert (if any) associated with it.” In fact, the activity performed by the Message Server Task of Reuss is a clearinghouse for system resources. The Message Server Task ensures that the Reuss system has the appropriate resources to affect delivery of alert messages. Thus, the deletion of these messages when a memory is full is fundamentally different from a “device for prioritizing...parameters and settings for display in a desired order” as in the present claimed invention. The messages being deleted by Reuss are NOT “expressly or inherently” equivalent to “prioritizing received ventilator parameters and settings for display in a desired order” as in the present claimed invention. Prioritizing the display of the ventilator parameters and settings as claimed in the present invention advantageously provides users with an easy and recognizable display for analyzing the received parameters and settings. “This feature allows the user to easily and efficiently customize his or her data viewing according to his or her needs” (Specification page 9, lines 23-24). Reuss provides a warning system and is not concerned with the efficient and “prioritized” display of “ventilator parameters and settings” as in the present claimed invention.

Furthermore, the section of Reuss cited by the Rejection that allegedly anticipates the claimed system provides no 35 USC 112 compliant enabling disclosure of displaying of messages or data of any type. Instead, the cited section discloses the manner in which messages are selected for removal from system or device memory (see col. 15, lines 3 – 10). This is NOT equivalent to “display[ing] in a desired order” any received “ventilator parameters and settings” as in the present claimed invention. Priority based deletion of messages from a memory as in Reuss is wholly unlike “prioritizing...for display” as in the present claimed system. In fact, Reuss specifically describes tasks that are responsible for displaying medical data on a device. In column 13, lines 53 – 56, Reuss discusses a “waveform display task and numeric display task” which are responsible for displaying waveforms and numeric vital signs. Reuss specifically provides mechanisms for displaying data yet fails to provide any 35 USC 112 compliant enabling disclosure of how the display of the medical data is affected. Additionally, Reuss describes a Trend Display Manager which is responsible for displaying a trend of therapy status data (see col. 14, lines 32 – 42). Therein, Reuss provides that the display of therapy status data is done over time. Similarly, to the description to the “Waveform Task” and Numeric Display Task”, Reuss is fails to disclose or suggest “a device for prioritizing received ventilator parameters and settings for display in a desired order” and a “display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order” as in the present claimed invention.

Reuss is also silent with respect to the feature of “allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. “One exemplary attribute may be display color. That is, when the ventilator chart shown in Fig. 3 is requested to be displayed via computer 26, ventilator data will be color coded on the web browser so that the user is able to distinguish what new data have changed. For

example, as old data that are displayed on the screen in one color (e.g., black) and carried forward to the let in each column as time advances, any newly acquired data that have changed will be displayed in another color (e.g. blue), in the column representing the current time” (Specification page 8, lines 27-33). Thus, the user is able to discern at a glance whether there have been any changes to ventilator parameters and settings. Allowing the changed parameters and settings to have attributes different from the original data as claimed in the present claimed invention provides the user with even more efficient and customizable display of ventilator data. There is no 35 USC 112 compliant enabling disclosure of the claimed feature and therefore, Reuss does not include each and every element of this claimed invention as required under MPEP 2131.

Specifically, the Rejection cites column 15, lines 4 – 8 as anticipating “allocating an attribute to distinguish changed ventilator parameter and settings”. Applicant respectfully disagrees. As discussed above, the Message Server Task is merely responsible for ensuring any device connected via the Reuss system has adequate resources to process alert messages that indicate a patient may need medical attention. Thus, the Message Server Task queries the physical memories of the devices and based on predetermined rules (i.e. message age, read status, priority of medical alert) determines which messages should be deleted from memory. This is fundamentally different than “allocating an attribute to distinguish changed ventilator parameters and setting” as in the present claimed invention. Furthermore, the Message Server Task is not concerned with or able to affect display of any data beyond removing the message and any indication that is associated with the deleted message. This feature in Reuss is unrelated to the present claimed feature of “allocating an attribute to distinguish changed ventilator parameters and settings”. Moreover, the features described in Reuss that do affect display of data fail to disclosure or suggest the attribute allocation of the claimed system. Instead, Reuss merely describes

features that allow data to be displayed and not how the data is actually displayed (see Waveform Task and Numeric Display Task, col. 13, lines 53 – 56).

Furthermore, as discussed above, Reuss is not concerned with providing a user-friendly and efficient way to process and display ventilator settings and parameters. Therefore, Reuss neither discloses nor suggests “a display generator for initiating generation of data representing a display of **prioritized ventilator parameters and settings** in the desired order and **attributes for distinguishing the changed ventilator parameters and settings**” as in the present claimed invention. While Reuss in Column 3, lines 46-60, Column 7, lines 27-43 and Column 15, lines 4-8 as cited by the Examiner describes displaying therapy status data at a patient monitor and a description of therapy status data and message server task maintenance respectively, none of the cited passages include any 35 USC 112 compliant enabling disclosure of the present claimed feature.

Additionally, while Reuss teaches in column 3, line 60 a “hardwired or wireless network connection to the remote devices of the caregivers,” this does not provide 35 USC 112 enabling disclosure of an “internet compatible method” as in the present claimed invention. As per the MPEP 2141.02, the reference needs to be looked at in its totality, and a hardwired or wireless network connection to remote devices used in a clinical or hospital setting does not imply an “internet compatible method” as used in the present invention.

Consequently withdrawal of the Rejection of claim 12 under 35 USC 102(e) is respectfully requested.

Rejection of Claims 2, 4-11, 13 and 15-22 35 USC 103(a) over Reuss et al. (U.S. Patent No. 6,406,426) in view of Shulman et al. (U.S. 2001/0030664)

Reversal of the rejection of claims 2, 4-11, 13 and 15-22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,406,426 issued to Reuss et al. in view U.S. 2001/0030664 issued to Shulman is respectfully requested because the rejection makes crucial errors in interpreting the cited references. The rejection erroneously states that claims 2, 4-11, 13 and 15-22 are made unpatentable by Reuss in view of Shulman.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed.Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ 657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

CLAIMS 2, 6, 7 and 8

Dependent claim 2 is considered to be patentable based on its dependence on claim 1. Therefore, the arguments presented above with respect to claim 1, also apply to claim 2. Claim 2 is also considered to be patentable because Shulman (with Reuss) neither discloses nor suggests “the attribute is a different color,” as recited in the present claimed invention. Schulman discloses use of different colors to show the status of various systems and components of the network. However, Schulman (with Reuss) neither discloses nor suggests utilizing a different color to distinguish a changed “ventilator parameters and settings” as in the present claimed invention. Schulman discloses using different colors to convey the status of various systems and components of the network. However, Schulman (with Reuss) is not concerned with the changing of ventilator parameters and settings and neither discloses nor suggests displaying the attribute in a different color when a change in ventilator parameters and settings is determined, as in the present claimed invention.

Applicant further respectfully submits that there is no reason or motivation to combine Reuss with Shulman. Reuss is concerned with monitoring the status of therapeutic devices and patient warning devices. Shulman is concerned with indicating when a message or dialogue is available for review and displaying an icon related to the specific message or dialog for local and remote home automation processing. Reuss and Shulman represent entirely different areas of art, with Reuss being concerned about medical monitoring of a patient and Shulman being concerned with automating a user’s home to “allow devices, macros, users, news, institutions and commerce services to interact” to deliver messages regarding home automation related events such as security warnings, carbon monoxide detectors, tornado warnings (Shulman paragraph [0006]).

Further, incorporating the features of Shulman into Reuss, merely results in a system that uses icons to monitor patient devices. This arrangement wholly fails to provide 35 USC 112 compliant enabling disclosure of the features of the claimed arrangement.

Claim 6 includes features similar to those described above with respect to claim 2. Therefore, claim 6 is considered to be patentable for the same reasons as claim 2. Claims 7 and 8 are dependent on claim 2. Therefore, the arguments presented above with respect to claim 2 also apply to claims 7 and 8. Consequently, withdrawal of the rejection of claims 2, 6, 7 and 8 under 35 USC 103(a) is respectfully requested.

CLAIM 4

Dependent claim 4 is considered to be patentable based on its dependence on claims 1 and 2. Therefore, the arguments presented above with respect to claims 1 and 2, also apply to claim 4. Claim 4 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the display generator generates data representing a window for displaying said ordered ventilator parameters and settings, in a first window,” as recited in the present claimed invention. Rather, column 3, lines 46-60 and column 7, lines 27-43 of Reuss merely describes parameters which can be monitored as well as transmission of data to patient monitors. These passages neither disclose nor suggest “the display generator generates data representing a window for displaying said ordered ventilator parameters and settings in a first window” as in the present claimed invention. As discussed above, Reuss (with Shulman) neither disclose nor suggest the “display generator” as claimed in present invention. Consequently, withdrawal of the rejection of claim 4 under 35 USC 103(a) is respectfully requested.

CLAIM 5

Dependent claim 5 is considered to be patentable based on its dependence on claim 4. Therefore, the arguments presented above with respect to claims 1, 2 and 4, also apply to claim 5. Claim 5 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the display generator comprises an internet browser,” as recited in the present claimed invention. Column 4, lines 8-22, column 9, lines 25-47 and column 15, lines 15-32 of Reuss disclose various remote access devices, but not an Internet browser. Also, as admitted in the Office Action dated March 15, 2004, Reuss does not incorporate an Internet browser. This feature is also neither disclosed nor suggested by Schulman. Consequently, withdrawal of the rejection of claim 5 under 35 USC 103(a) is respectfully requested.

CLAIM 9

Dependent claim 9 is considered to be patentable based on its dependence on claim 8. Therefore, the arguments presented above with respect to claims 1, 2, and 8 also apply to claim 9. Claim 9 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the second user command comprises selection of a filtered list,” as recited in the present claimed invention. Rather, as described above, column 15, lines 1-15 of Reuss merely describes the maintenance and removal of messages from the memory of the remote access device. There is no mention or even suggestion in this passage of a second user command or of a filtered list as in the present invention. Thus this passage, and elsewhere in Reuss (with Shulman) neither discloses nor suggests “the second user command comprises selection of a filtered list” as in the present claimed invention. Consequently, withdrawal of the rejection of claim 9 under 35 USC 103(a) is respectfully requested.

CLAIM 10

Dependent claim 10 is considered to be patentable based on its dependence on claim 8. Therefore, the arguments presented above with respect to claims 1, 2 and 8 also apply to claim 10. Claim 10 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the second user command comprises creation of a set of values for selected parameters and settings,” as recited in the present claimed invention. The passages of Reuss cited in the Office Action disclose parameters which can be monitored and transmission of data to patient monitors as well as message memory maintenance for the remote access devices. These passages neither disclose nor suggest “the second user command comprises creation of a set of values for selected parameters and settings” as in the present claimed invention. Consequently, withdrawal of the rejection of claim 10 under 35 USC 103(a) is respectfully requested.

CLAIM 13

Dependent claim 13 is considered to be patentable based on its dependence on claim 12. Therefore, the arguments presented above with respect to claim 12 also apply to claim 13. Claim 13 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the attribute is a different color,” as recited in the present claimed invention. Schulman discloses use of different colors to show the status of various systems and components of the network. However, Schulman (with Reuss) neither discloses nor suggests utilizing a different color to distinguish a changed ventilator parameter and setting as in the present claimed invention. Schulman discloses using different colors to convey the status of various systems and components of the network. However, Schulman (with Reuss) is not concerned with the changing of ventilator parameters and settings and neither discloses nor suggests displaying the attribute in a

different color when a change in ventilator parameters and settings is determined, as in the present claimed invention.

Claim 17 includes features similar to those described above with respect to claim 13. Therefore, claim 17 is considered to be patentable for the same reasons as claim 13. Consequently, withdrawal of the rejection of claims 13 and 17 under 35 USC 103(a) is respectfully requested.

CLAIM 15

Dependent claim 15 is considered to be patentable based on its dependence on claim 12. Therefore, the arguments presented above with respect to claim 12, also apply to claim 15. Claim 15 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the step of initiating generation, initiates generating of data representing a window for displaying said ordered ventilator parameters and settings,” as recited in the present claimed invention. Rather, column 3, lines 46-60 and column 7, lines 27-43 of Reuss merely describes parameters which can be monitored and transmission of data to patient monitors. These passages neither disclose nor suggest “the step of initiating generation, initiates generating of data representing a window for displaying said ordered ventilator parameters and settings” as in the present claimed invention. Consequently, withdrawal of the rejection of claim 15 under 35 USC 103(a) is respectfully requested.

CLAIM 16

Dependent claim 16 is considered to be patentable based on its dependence on claim 15. Therefore, the arguments presented above with respect to claim 15, also apply to claim 16. Claim 16 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the generating step is done by an internet browser,” as

recited in the present claimed invention. Column 4, lines 8-22, column 9, lines 25-47 and column 15, lines 15-32 of Reuss disclose various remote access devices, but not an Internet browser. Also, as admitted in the Office Action dated March 15, 2004, Reuss does not incorporate an Internet browser. This feature is also neither disclosed nor suggested by Schulman. Consequently, withdrawal of the rejection of claim 16 under 35 USC 103(a) is respectfully requested.

CLAIMS 18 and 19

Dependent claim 18 is considered to be patentable based on its dependence on claim 12. Therefore, the arguments presented above with respect to claim 12, also apply to claim 18. Claim 18 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “acquiring another set of new ventilation unit parameters and settings, in response to the user command,” as recited in the present claimed invention. Applicant respectfully submits that column 15, lines 1-15 and column 16, lines 45-65 of Reuss, cited in the rejection, merely disclose the maintenance and removal of messages from the memory of the remote access device and how the mailbox operates as a first-in, first-out buffer by maintaining the temporal order of messages sent and removed from it. These passages neither disclose nor suggest “**acquiring** another set of new ventilation unit parameters and settings, in response to the user command,” as in the present claimed invention. These features are also neither disclosed nor suggested by Schulman with Reuss.

Claim 19 includes features similar to those described above with respect to claim 18. Therefore, claim 19 is considered to be patentable for the same reasons as claim 18, namely Reuss (with Shulman) neither discloses nor suggests “**prioritizing** the received ventilation unit parameters and settings for display in a desired order is in response to a

second user command,” as recited in the present claimed invention. Consequently, withdrawal of the rejection of claims 18 and 19 under 35 USC 103(a) is respectfully requested.

CLAIM 20

Dependent claim 20 is considered to be patentable based on its dependence on claim 19. Therefore, the arguments presented above with respect to claim 19 also apply to claim 20. Claim 20 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the second user command comprising selection of a filtered list,” as recited in the present claimed invention. Rather, as described above, column 15, lines 1-15 of Reuss merely describes the maintenance and removal of messages from the memory of the remote access device. There is no mention or even suggestion in this passage of a second user command or of a filtered list, thus this passage, and elsewhere in Reuss (with Shulman) neither discloses nor suggests “the second user command comprising selection of a filtered list” as in the present claimed invention. Consequently, withdrawal of the rejection of claim 20 under 35 USC 103(a) is respectfully requested.

CLAIM 21

Dependent claim 21 is considered to be patentable based on its dependence on claim 19. Therefore, the arguments presented above with respect to claim 19 also apply to claim 21. Claim 21 is also considered to be patentable because Reuss (with Shulman) neither discloses nor suggests, “the second user command comprises creation of values for selected parameter and settings,” as recited in the present claimed invention. The passages of Reuss cited in the Office Action disclose parameters which can be monitored and transmission of data to patient monitors as well as message memory maintenance for the remote access devices. These passages neither disclose nor suggest “the second user command comprises creation of values for selected parameter and settings” as in the

present claimed invention. Consequently, withdrawal of the rejection of claim 21 under 35 USC 103(a) is respectfully requested.

CLAIM 22

Dependent claim 22 is considered to be patentable based on its dependence on claim 12. Therefore, the arguments presented above with respect to claim 12 also apply to claim 22. Applicant respectfully submits that claim 22 is dependent on claim 12, which is patentable over Reuss, as described above. Thus, the combination of Reuss with Shulman also does not provide the features of the present claimed invention to make the present claimed invention unpatentable. Consequently, withdrawal of the rejection of claim 22 under 35 USC 103(a) is respectfully requested.

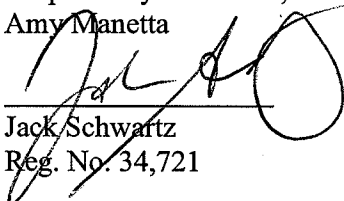
VIII CONCLUSION

Reuss with Shulman, alone or in combination neither discloses nor suggests an “an internet compatible system for displaying medical information derived from a plurality of sources,” as recited in the present claimed invention. Additionally, Reuss with Shulman neither discloses nor suggests “a communication network for acquiring ventilator parameters and setting associated with a patient on a substantially periodic basis and in response to a user command,” as recited in the present claimed invention. Reuss with Shulman, alone or in combination, also neither disclose nor suggest “a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings,” as recited in the present claimed invention. Furthermore, Reuss with Shulman neither disclose nor suggest “a display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes fro

distinguishing the changed ventilator parameters and settings," as recited by the present claimed invention.

Accordingly it is respectfully submitted that the rejection of Claims 1, 2, 4-13 and 15 – 22 should be reversed.

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APPENDIX I - APPEALED CLAIMS

1. (Previously Presented) An internet compatible system for displaying medical information derived from a plurality of sources, comprising:

a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command;

a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings; and

a display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

2. (Original) The system of claim 1 wherein the attribute is a different color.

3. (Cancelled)

4. (Previously Presented) The system of claim 2 wherein the display generator generates data representing a window for displaying said ordered ventilator parameters and settings, in a first window.

5. (Previously Presented) The system of claim 4 wherein the display generator comprises an internet browser.

6. (Original) The system of claim 4 wherein the ventilator parameters and settings are displayed so that the changed ventilator parameters and changed ventilator settings are displayed in the different color.

7. (Previously Presented) The system of claim 2 wherein the device, in response to the user command, acquires a new set of ventilator parameters and settings.

8. (Previously Presented) The system of claim 2 wherein the device prioritizes the received ventilation unit parameters and settings for display in a desired order in response to a second user command.

9. (Previously Presented) The system of claim 8 wherein the second user command comprises selection of a filtered list.

10. (Previously Presented) The system of claim 8 wherein the second user command comprises creation of a set of values for selected parameters and settings.

11. (Original) The system of claim 4 wherein said menu generator comprises a user selection for selecting anyone of the plurality of sources.

12. (Previously Presented) An internet compatible method for displaying medical information derived from a plurality of sources, comprising the steps of:

acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command;

prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed parameters and settings; and

initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

13. (Original) The method of claim 12, wherein the attribute is a different color.

14. (Cancelled)

15. (Previously Presented) The method of claim 12 wherein the step of initiating generation, initiates generating of data representing a window for displaying said ordered ventilator parameters and settings.

16. (Original) The method of claim 15 wherein the generating step is done by an internet browser.

17. (Previously Presented) The method of claim 15 wherein the generating step displays the ventilator parameters and settings so that the changed ventilator parameters and changed ventilator settings are displayed in the different color.

18. (Previously Presented) The method of claim 12 further comprising the step of acquiring another set of new ventilation unit parameters and settings, in response to the user command.

19. (Previously Presented) The method of claim 12 wherein the step of prioritizing the received ventilation unit parameters and settings for display in a desired order is in response to a second user command.

20. (Original) The method of claim 19 wherein the second user command comprising selection of a filtered list.

21. (Previously Presented) The method of claim 19 wherein the second user command comprises creation of values for selected parameter and settings.

22. (Original) The method of claim 12 further comprising the step of selecting any one of a plurality of sources.

23. (Withdrawn) A method for acquiring and storing ventilator data comprising ventilator parameters and ventilator settings from a medical device over a communication network, comprising the steps of:

establishing communication with the medical device over communication network;
acquiring selected ventilator data from the medical device over the communication network;

determining if a value of at least one of: 1) ventilator settings and 2) ventilator parameters of acquired ventilator data has changed; and

only if the value has changed, storing the acquired ventilator data.

24. (Withdrawn) The method of claim 23, wherein if the selected ventilator data are acquired in response to a user request, automatically storing the acquired ventilator data, without the determining step.

25. (Withdrawn) The method of claim 23 further comprising the step of allocating an attribute to distinguish any changed ventilator data from previously acquired ventilator data.

26. (Withdrawn) The method of claim 23 further comprising the step of determining if the value has changed more than a predetermined threshold.

27. (Withdrawn) A method for acquiring and storing ventilator data comprising ventilator parameters and ventilator settings from a medical device over a communication network, comprising the steps of:

establishing communication with the medical device over the communication network;

acquiring selected ventilator data periodically from the medical device over the communication network;

determining whether a value of ventilator settings of acquired ventilator data has changed; and

only if the value has changed, storing the acquired ventilator data.

APPENDIX II - EVIDENCE

Applicant does not rely on any additional evidence other than the arguments submitted hereinabove.

APPENDIX III - RELATED PROCEEDINGS

Applicant respectfully submits that a Pre-Appeal Brief Request for Review was filed on July 19, 2006 and a Notice of Panel Decision was mailed on August 14, 2006. The decision indicated that the Application remains under appeal because there is at least one actual issue for appeal.

APPENDIX IV - TABLE OF CASES

1. *In re Howard*, 394 F. 2d 869, 157 USPQ 615, 616 (CCPA 1968)
2. 29 AM. Jur 2D Evidence S. 33 (1994)
3. *In re Ahlert*, 424 F. 2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970)
4. *In re Eynde*, 480 F. 2d 1364, 1370; 178 USPQ 470, 474 (CCPA 1973)
5. *In re Fine*, 5 USPQ 2d 1600, (Fed Cir. 1988)
6. ACS Hospital Systems Inc v. Montefiore Hospital, 221 USPQ 929,933
(Fed. Cir. 1984)
7. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966)
8. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438
(Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988)
9. *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ
657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986)
10. *In re Oetiker*, 977 F2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)

APPENDIX V - LIST OF REFERENCES

<u>U.S. Pat. No.</u>	<u>Issued Date</u>	<u>102(e) Date</u>	<u>Inventors</u>
6,406,426 B1	June 18, 2002		Reuss et al.

<u>U.S. Pub. No.</u>	<u>Pub. Date</u>	<u>Inventors</u>
2001/0030664A1	October 18, 2001	Shulman et al.

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